

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-398

March 17, 1999

COMMUNICATIONS DESIGN, INC.
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a Local
Exchange and as a Facilities-Based
Interexchange Telephone Utility

ORDER GRANTING
AUTHORITY TO PROVIDE
LOCAL AND
FACILITIES-BASED
INTEREXCHANGE TELEPHONE
SERVICES AND APPROVING
SCHEDULES OF TERMS AND
CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants Communications Design, Inc. (CDI or Company) the authority to provide competitive local exchange and facilities-based interexchange telephone services in the State of Maine, and approves the Company's Terms and Conditions and Rate Schedules. We also exempt CDI from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On May 28, 1998, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, CDI filed a petition with the Commission requesting authority to provide local exchange and interexchange telephone services on both a resale and facilities basis in the Maine service area of the New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine. On January 6, 1999, CDI clarified that it sought authority throughout the State of Maine.

On January 3, 1986, in Docket No. 83-294, the Commission authorized CDI to resell and share intrastate telecommunications within Maine. In its petition in this proceeding, CDI stated that it has not exercised the earlier authority granted by the Commission.

35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service. 47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting CDI the authority to provide facilities-based local exchange and facilities-based interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b). CDI's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and facilities based interexchange telephone services in Maine.

CDI initially requested authority to provide interexchange service throughout the state and local exchange service in all areas served by Bell Atlantic. It later amended the latter request to provide local service to all areas of the State. We approve its request to provide interexchange service throughout the State. At this time, however, CDI is only willing and able to provide facilities-based local exchange service to areas within the Bell Atlantic exchanges of Biddeford, Alfred, Sanford and Gorham. We will grant authority to CDI to provide facilities-based local exchange service only within those exchanges.

CDI's proposed Terms and Conditions, which we approve today, also limit its local exchange service offering to the four exchanges listed above. If CDI wishes to expand its local exchange service area in the future, it shall seek such approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. CDI shall simultaneously file amended Terms and Conditions pursuant to 35-A M.R.S.A. § 307. With any such application, CDI shall include information establishing a readiness to provide facilities-based local service within a reasonable period of time in the specifically identified additional areas. It is not necessary for a Competitive Local Exchange Carrier (CLEC) with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on such an application and Terms and Conditions revisions.

II. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

With its petition for authority, CDI filed proposed Terms and Conditions and Rates for its proposed interexchange services. On December 31, 1998, CDI filed a set of Terms, conditions and rates for its proposed local exchange service.¹

On February 11, 1999, CDI filed a substitute Term and Condition that limited its local exchange service area as described above. On March 10 and 11, 1999 CDI filed further technical revisions to that page and to others.

We allow the Terms and Conditions filed by CDI on December 31, 1998 and March 10 and 11, 1999 to go into effect. CDI did not use the Commission's expedited process for approval, which includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in CDI's terms and conditions and the Commission's Rules or a statute, the rule or statute will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of CDI's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by CDI to go into effect.

III. INTERCONNECTION AGREEMENT

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the Incumbent Local Exchange Carrier(s) (ILEC(s)) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for a CLEC's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent telephone companies are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254"

¹ This filing superseded a similar filing on October 21, 1998.

On July 2, 1998, in Docket No. 98-298, the Commission approved an agreement between CDI and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine, pursuant to 47 U.S.C. § 252. As a condition of providing local exchange telephone service, CDI must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

IV. PAYMENT OF ACCESS CHARGES

In its petition CDI stated that it seeks “to provide competitive . . . interexchange switched and non switched telecommunications services” and “intraLATA high capacity fiber transmission services” in Maine. The Commission has determined that CDI will operate as a facilities-based interexchange telephone utility. Our approval of the Company’s petition to provide interexchange service in Maine is conditioned on CDI’s payment of access charges as required by Chapter 280, *Provision of Competitive Telecommunications Services*, to local exchange carriers who have on file with the Commission approved access charge rate schedules.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, CDI must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. CDI shall also comply with any applicable Commission rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, CDI is exempt from Chapter 210 of the Commission’s Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests, related to CDI’s interexchange carrier activities. Although CDI has not requested a waiver from the requirements of Chapter 210, or from 35-A M.R.S.A. §§ 707 and 708, the Commission has the authority to grant such waivers on its own motion. Because CDI’s rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate

minutes for use for the purpose of determining its regulatory assessment.² If CDI resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), CDI

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

CDI is a subsidiary of Saco River Communications Corporation, which in turn is a subsidiary of Saco River Telegraph and Telephone Company (SRT&T), an incumbent local exchange carrier serving Maine customers. The Commission approved the creation of CDI as an affiliate of its parent, Saco River Communications Corporation, in Docket No. 83-294. The exemption from 35-A M.R.S.A. §§ 707 and 708 does not apply to SRT&T, which is an affiliated interest of CDI. SRT&T must continue to comply with the requirements of sections 707 and 708 because it is an incumbent local exchange carrier, and the Commission actively regulates its rates.

In addition, CDI shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. OTHER REQUIREMENTS

CDI shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

In its request for authority, CDI asked that the Commission “require that any and all affected incumbent dominant carriers afford CDI treatment equal with that afforded existing exchange carriers.” CDI stated that we “should direct that such arrangements

²The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

be accorded CDI on an interim basis, until the terms and parameters of permanent co-carrier arrangements are determined by this Commission in a generic proceeding and/or pursuant to negotiations with BA-ME pursuant to the Federal Telecommunications Act of 1996.” CDI’s request goes beyond the scope of this proceeding, where we are solely granting authority for CDI to provide service as a local exchange and facilities-based interexchange telephone utility, and approving its initial schedules of terms and conditions and rates. CDI already has an interconnection agreement with BA-ME that we approved on July 2, 1998 in Docket No. 98-298.

CDI stated in its request for authority that “[u]pon receipt of the authority requested by this Application, CDI will apply for NXX codes as a certificated local exchange carrier” CDI has agreed that it will apply for such codes only if it will provide local service (defined as local loop facilities and loop switching) to the area to which the code is assigned, unless or until the Commission rules otherwise, either specifically for CDI, or in a Commission rule or any other ruling applicable to all CLECs or all LECs.

CDI has provided the staff with information that reasonably indicates that it will be able to provide service to those locations within three months of this Order.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Communications Design, Inc. to provide facilities based interexchange telephone services in the State of Maine and competitive local exchange service within the areas of the State of Maine defined by the Saco, Alfred, Sanford and Gorham exchanges of New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Maine;

2. Exempt Communications Design, Inc. from the requirements of Chapter 210 of the Commission’s Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt Communications Design, Inc. from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that Communications Design, Inc. shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of Communications Design, Inc. or of any entity that owns more than 50% of Communications Design, Inc.. Communications Design, Inc. shall also provide notice of any other changes in the

name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. Communications Design, Inc. shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Communications Design, Inc. shall amend its rate schedules and terms and conditions to reflect any change in identity. The exemptions in this paragraph do not apply to Saco River Telegraph and Telephone Company;

4. Order that Communications Design, Inc. shall pay access charges as required by Chapter 280 of the Commission's Rules and access rate schedules filed by local exchange carriers and approved by the Commission;

5. Order that Communications Design, Inc. shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate for interexchange service that is greater than 20% to all affected customers;

6. Order that the authority granted and conditions imposed in this order will supersede any conflicting provisions adopted by the Commission in Docket No. 83-294; and

7. Order that Communications Design, Inc.'s proposed terms and conditions and rate schedules for interexchange service listed below, as filed on December 31, 1998 (all Original pages) and on March 10, 1999, and attached to this Order, shall be effective on the date of this Order:

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8. Order that Communications Design, Inc.'s proposed terms and conditions and rate schedules for local exchange service listed below, as filed on December 31, 1998 and amended on March 10 and 11, 1999, (all Original pages, marked "First Draft" except as noted below) and attached to this Order, shall be effective on the date of this Order:

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Dated at Augusta, Maine, this 17th day of March, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.